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12 Group Hospitalization and Medical Services, Inc.
13 D/B/A CareFirst BlueCross BlueShield

14 **UNITED STATES DISTRICT COURT**
15 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

17 RICHARD CLARK, on behalf of himself
18 and all other similarly situated,

19 Plaintiffs,

20 vs.

21 GROUP HOSPITALIZATION AND
22 MEDICAL SERVICES, INC. D/B/A
23 CAREFIRST BLUECROSS
24 BLUESHIELD, EMERGENCY
PHYSICIANS ASSOCIATES, and DOES
1-10,

25 Defendants.

CASE NO: 10-CV-00333-BEN-BLM

**NOTICE OF MOTION AND MOTION OF
DEFENDANT GROUP HOSPITALIZATION
SERVICES, INC. D/B/A CAREFIRST
BLUECROSS BLUESHIELD TO DISMISS
PURSUANT TO FED. R. CIV. PROC. 12(b)(6),
OR IN THE ALTERNATIVE, MOTION TO
STRIKE PURSUANT TO FED. R. CIV. PROC.
12(f)**

Hon. Roger T. Benitez
Court Room 3
Hearing Date: June 1, 2010
Hearing Time: 10:30 a.m.

1 TO ALL PARTIES AND ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on June 1, 2010, at 10:30 a.m., or as soon thereafter as
3 counsel may be heard, in the courtroom of the Honorable Roger T. Benitez, Courtroom 3, Edward
4 J. Schwartz United States Courthouse, 940 Front Street, San Diego, California 92101, Defendant
5 Group Hospitalization and Medical Service, Inc. dba CareFirst BlueCross BlueShield's
6 ("CareFirst") will and hereby does move the Court to dismiss with prejudice the Complaint in its
7 entirety, or in the alternative, to strike portions of the Complaint.

8 Pursuant to Federal Rules of Civil Procedure 12(b)(6), CareFirst is entitled to dismissal of
9 the entire Complaint, including the two asserted causes of action for (1) Recovery of Benefits
10 under ERISA, 29 U.S.C. § 1132 (a)(1)(B); and (2) for violations of California's Unfair
11 Competition Law, California Business and Professions Code § 17200, et seq. ("UCL"), with
12 prejudice, for the following reasons:

13 First, Plaintiff Richard Clark ("Plaintiff") was not denied any benefits under his ERISA
14 health plan that were due to him as necessary to state a claim under ERISA § 501(a)(1)(B). *See*
15 29 U.S.C. § 1132(a)(1)(B) (providing that "[a] civil action may be brought by a participant or
16 beneficiary . . . (B) to recover benefits due to him under the terms of his plan, to enforce his rights
17 under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan.")
18 The allegations in Plaintiff's Complaint make clear that CareFirst properly rendered health
19 benefits according to the terms of his health benefits plan and fulfilled its obligations under the
20 plan as a matter of law.

21 Second, Plaintiff's claims brought under California's UCL, alleging violations of
22 California's Knox-Keene Act, are preempted by ERISA. *See Cleghorn v. Blue Shield of*
23 *California*, 408 F.3d 1222 (9th Cir. 2005) (dismissing UCL claims on the ground of ERISA
24 preemption).

25 Third, to the extent Plaintiff alleges that CareFirst violated California's Knox-Keene Act
26 by engaging in the unlawful practice known as "balance billing," allegations in the Complaint
27 contradict this assertion. The Complaint alleges that Defendant Emergency Physicians
28 Associates, and not CareFirst, balance billed Plaintiffs. As such, Plaintiff cannot state a UCL

1 claim against CareFirst predicated on a violation of the Knox-Keene Act.

2 Because Plaintiff's Complaint is fatally flawed and any amendment would be futile,
3 CareFirst moves to dismiss the Complaint in its entirety with prejudice.

4 In the alternative, CareFirst moves to strike portions of the Complaint to the extent that
5 the class allegations include non-California residents who incurred no injury within California.
6 (Complaint filed February 10, 2010, ¶ 16). Plaintiff may not assert a California UCL claim on
7 behalf of individuals who do not reside in California and suffered no injury in California. *See*
8 *Norwest Mortgage, Inc. v. Superior Ct.*, 72 Cal. App. 4th 214 (1999).

9 This motion is based on this Notice of Motion and Motion, the accompanying
10 Memorandum of Points and Authorities, the pleadings and papers on file in this action, such
11 matters of which the Court may take judicial notice, and upon such matters as may be presented
12 to the Court prior to or at the time of the hearing.

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14
15 Respectfully submitted,

16 Dated: April 5, 2010

Crowell & Moring LLP

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